But it has been held that the personal representatives of the insured cannot recover under such circumstances, partly on the ground that suicide is not a risk assumed by the insurer, but principally on the ground that the assumption of such a risk is against public policy.[6] There seems to be no sound reason for the distinction.[7] If it is against public policy for personal representatives to recover on a provision insuring against suicide which is included in the broad language of the contract, it is against public policy for such a provision to be included in any insurance contract, and the contract must be void to that extent. At least one case has taken this view and has denied recovery to a beneficiary.[8] But as the great weight of authority is opposed to this case and to the reasoning in the cases denying recovery to the representatives of the insured, it must be taken as settled that where the insured has committed suicide there is no public policy against recovery on a silent policy.

The two lines of cases seem irreconcilable in principle. For, whereas in the former it is said to be against public policy to insure against death as the result of a crime; in the latter it is considered not against public policy to insure against suicide which, if not a crime, is clearly an act against the policy of the law. On principle the former view seems the sounder. The argument that an express stipulation to insure against death at the hands of justice is against public policy as tending to encourage crime is unanswerable. Nor should it make a difference that the stipulation is embodied in a wider contract of indemnity.[9] Probably no court would hold valid an accident policy insuring a robber against injury while plying his trade. And certainly an insured cannot recover on a fire insurance policy where he intentionally burns the property insured, even though the policy is broad enough in its terms to cover all risks.[9] These analogies, however, have been disregarded in the suicide cases, and the modern tendency of the law as there evidenced is not to limit recovery on silent policies, even though considerations of public policy in some cases would seem to forbid it.[10] The case under discussion, however, seems to accord with that tendency, and it is not improbable that, on the analogy of the suicide cases, it may be followed in spite of prior contrary decisions.

EFFECT OF ADJUDICATION OF BANKRUPTCY ON THE TITLE TO THE PROPERTY OF THE BANKRUPT. — The Bankruptcy Act of 1898 provides that the title of the trustee shall vest as of the date of adjudication.[1] This fiction has caused a diversity of opinion as to the nature and location of the title after adjudication and before the appointment of a trustee. Title has been said to be *in custodia legis*. But it is significant that because of the opposition of the law to lapses in title, and the difficulty in conceiving the court as a title-taking body, courts have taken this view only when

Life Ins. Co., 183 Pa. St. 563; Patterson *v.* Mutual Life Ins. Co., 100 Wis. 118; Campbell *v.* Supreme Conclave, 66 N. J. L. 274; Seiler *v.* Life Ass'n, 105 Ia. 87; Lange *v.* Royal Highlanders, 110 N. W. 1110 (Neb.).

[6] Ritter *v.* Mutual Life Ins. Co., 169 U. S. 139. See Supreme Commandery *v.* Ainsworth, 71 Ala. 436, 446.

[7] Campbell *v.* Supreme Conclave, *supra*. See 11 HARV. L. REV. 547.

[8] Hopkins *v.* Life Assur. Co., 94 Fed. 729.

[9] Washington Union Ins. Co. *v.* Wilson, 7 Wis. 169.

[10] McDonald *v.* Order of Triple Alliance, 57 Mo. App. 87. But see Hatch *v.* Ins Co., 120 Mass. 550.

[1] § 70 *a*, Act of July 1, 1898; 30 Stat. at L. 544.

necessary in order to protect property during the interval either from the elements, the fraud of the bankrupt, foreclosure sales, or seizure by state officers.[2] As the court's agent in such interference must maintain any action in the bankrupt's name,[3] and as the bankrupt himself has been allowed after adjudication to redeem land sold for taxes[4] and to prosecute an infringement of a copyright,[5] it must be concluded that the court's interference was with possession, not with title. It would follow, then, that title remains in the bankrupt on adjudication. This title, however, is sometimes said to be subject to a constructive trust in favor of the creditors. Adjudication indicates that the bankrupt will on a future day be stripped of his assets. And from adjudication a duty is imposed on the bankrupt to surrender such property as he had on the day of his adjudication to the trustee on appointment. But this inchoate duty would never become absolute if for one of many possible reasons no trustee was appointed, and in such event the creditors would never have had any estate in the assets. In the interim the bankrupt has the insurable interest;[6] and has the beneficial user and possession of the assets, except as the Bankruptcy Act expressly limits his right of transfer and allows the court to interfere with his possession in cases of fraud or neglect. These statutory provisions, designed to protect the creditors, should not, therefore, be interpreted as creating a strict equitable interest, particularly since the creditors may thereby suffer detriment.[7] For example, in a late Louisiana case the bankrupt's property, covered by an insurance policy which would be avoided by a change of interest, burned between adjudication and appointment, and the court held that no change of interest had been effected by adjudication.[6] *Gordon* v. *Mechanics', etc., Ins. Co.*, 45 So. 384. Raising a strict equitable interest has been held to constitute such a change,[8] and placing the legal title *in custodia legis* undoubtedly would do so. But the fiction of relation was intended to protect the creditors. It is impossible that interest or title passes to the trustee before his appointment; on his appointment he can take title only to property then in fact in existence, though he takes such property as of the date of adjudication.

This general rule that title remains in the bankrupt subject to the court's interference with possession would logically make *bona fide* payments to the bankrupt and sales to *bona fide* purchasers in the interval incontestible by the trustee. But an express provision of the Act in support of the fiction of relation back protects only *bona fide* holders before adjudication.[9] In the absence of fraud by the bankrupt a contrary rule, by obviating the paralysis of the estate in the interval, might benefit the creditors and would not despoil innocent parties, who derive small comfort from the further resulting fiction that petition and adjudication are constructive notice of bankruptcy.[10]

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[2] *In re* Carow, 41 How. Pr. (N. Y.) 112; White *v.* Schloerb, 178 U. S. 542; *In re* Engel, 105 Fed. 893; Taylor *v.* Robertson, 21 Fed. 209. But *cf.* Rand *v.* Sage, 94 Minn. 344.

[3] Lansing *v.* Manton, Fed. Cas. No. 8077; Sutherland *v.* Davis, 42 Ind. 26.

[4] Hampton *v.* Rouse, 22 Wall. (U. S.) 263.

[5] Myers *v.* Callaghan, 5 Fed. 726.

[6] See Fuller *v.* Jameson, 98 N. Y. App. Div. 53, aff'd 184 N. Y. 605; Fuller *v.* N. Y. Fire Ins. Co., 184 Mass. 12.

[7] See Rand *v.* Iowa Central R. R., 186 N. Y. 58. *Cf.* 20 HARV. L. REV. 411.

[8] Skinner *v.* Houghton, 92 Md. 68; Gibb *v.* Phila. Fire Ins. Co., 59 Minn. 267.

[9] § 70 *e*.

[10] See Mueller *v.* Nugent, 184 U. S. 1; State Bank of Chicago *v.* Cox, 143 Fed. 91.